

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION..**

WRIT PETITION NO. 5049 OF 1996..

Sai Industries.

.. Petitioner.

V/s.

Shri Dhan Gorakhhadursing
& anr.

.. Respondents.

Shri Aditya Chitale for the petitioner.

Shri N.M. Ganguli for the respondents.

CORAM : V.C.DAGA, J.

DATED : 19.4.2006.

P.C. :

. Heard rival parties.

Perused petition.

. This petition is directed against the order

dated 3.4.1996 passed by the Presiding Officer,
First Labour Court, Mumbai, in Reference (ID) No.
286 of 1987, directing reinstatement of the workman
with full backwages and continuity of service with
effect from 29.3.1986.

FACTS:

2. When this matter was called out yesterday,

i.e. 18.4.2006, Shri Aditya Chitale, learned
Counsel appearing for the petitioner had opened his
arguments. The petition was heard till closure of
the Court hours i.e. upto 5 p.m.. The matter
remained part-heard. It came to be posted on the

next working day i.e. on 19.4.2006. That is how, matter has come on today's board for further hearing.

3. When this matter was called out today, an adjournment was sought on behalf of Shri Chitlae saying he is busy in another Court. Finding no sufficient case, prayer for adjournment was refused. With the result, without hearing the petitioner, Shri Ganguli, appearing for the respondent was called upon to make his submissions. That is how, petitioner is heard finally.

4. It appears from the record that the petitioner was engaged in the business of manufacture of copper, brass tubes etc. having its factory at MIDC at Andheri. According to the petitioner, it had provided accommodation facility to some of its employees in their factory premises itself.

5. The respondent No.1 used to visit one of the said employees working in the factory. Petitioner having noticed that the respondent No.1 was staying with one of his relatives unauthorisedly, he was prevented from occupying the accommodation. Consequently, he got enraged and started abusing and threatening Shri Kanai and others and demanded Rs.

5,000/- to vacate. Respondent No.1 persisted in making claim against the petitioner, which, ultimately, led to filing of complaint before the Government Labour Officer, which culminated in the impugned reference to the Labour Court.

6. The respondent No.1 filed his statement of claim contending that he was employed as a Watchman with the petitioner-Company since 1982 and his services were terminated on 28.3.1986 without any notice and/or following provisions of law.

7. On being noticed, petitioner filed its written statement and resisting claim of respondent No.1. Petitioner claims to have filed voluminous documents consisting of petty cash book, salary register, Attendant Register to show that none of those documents bore name of respondent No.1 as an employee of the Company.

8. In rebuttal, respondent No.1 produced certain blank envelopes bearing rubber stamp of "M/s Sai Industries" purporting to be pay packet, in which monthly salary used to be paid to him; by the issued by the petitioner-Company.

9. The Respondent No.1 deposed to support his case. He did not lead evidence of any other witness

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other than himself. The petitioner adduced evidence of one of its Ex-Accounts and Administrative Officer, Shri Prakash Bhatia.

10. The Labour Court after appreciating evidence allowed the reference granting reinstatement to respondent No.1 with full backwages and continuity of service.

11. This order of the Labour Court is a subject matter of challenge filed under Articles 226 & 227 of the Constitution of India.

12. Shri Chitale, learned Counsel appearing for the petitioner had circulated written submissions from which following submissions emerge:

(a). That the story or the workman that he was in the employment of the petitioner is concocted and that the respondent No.1 was unauthorizedly staying in the room allotted to one of the employees of the petitioner- Company.

(b). That the proceedings were initiated by the respondent No.1 for collateral purposes with a view to extract monies from the petitioner, which is evidenced by the fact that he had demanded Rs.5,000/- to vacate the said illegally occupied

room of one of employees of the company.

(c). That the learned Judge erred in not giving due weightage to the inconsistency regarding the receipt of the letter in March 1986 by the respondent No.1 regarding his brother's death, who incidentally expired in December 1986.

(d). That nothing prevented the respondent No.1 from adducing evidence of Watchman, including his maternal uncle, to prove that he was in the employment of the petitioner.

(e). That the learned Judge ought to have appreciated the so-called pay packets/envelopes produced by respondent No.1.

13. Per Contra, Shri Ganguli, learned Counsel appearing for the respondent mainly relied upon reasons recorded in support of the impugned order. He, thus, relied upon finding of the Labour Court alone.

Consideration:

14. Having heard learned Counsel for the rival parties, it is clear that the case of the petitioner-company is, that the second party being

relative of the other watchman, to whom room was allotted, started staying with him taking undue advantage of the situation. However, there is no force in this argument as the Company could not name muchless produce any person in their employment who was said to be the relative of the party No.2. Even witness examined on behalf of the company could not state the name of a person who was related to second party. In the circumstances, the stand taken by the company was rightly rejected by the Court below.

15. In the normal course, when watchman's residence is situated in the compound premises of the company, the Company does not allow outsiders to stay in the premises of the company. The second party was staying must be as a watchman, seems to be more probable in absence of any other cogent material.

16. The second party-workman has also produced some packets bearing stamps of the company with figures of wages mentioned thereon which goes to show payment of wages to the second party. This may not be a very strong evidence in favour the workman but it has to be kept in mind while considering other evidence on record.

17. The company has produced muster rolls on

record. No name of any watchman is to be found in the muster rolls. This evidence goes against the petitioner-Company. There is no force in the argument of the petitioner that name of this party No.2- Watchman has not been mentioned in the account books. The names of other three watchmen are missing from the record. If that be so, the case put by the party No.2 is more probable.

18. Let me go to other circumstances after receipt of the notice from party No.2 through his Advocate dated 9.4.1986, petitioner did not reply to the said demand letter. Petitioner did not appear before Conciliation Officer. Silence for much long period also goes against the petitioner-company

19. Shri Prakash Bhatia could not name any watchmen out of four who were working in the company. He stated that one Shri Bhagat Singh and Khadak Singh were working in the company, however, their names were not to be seen in the record produced by the company. He has also stated that salary paid to watchman were similar. This clearly established that the company had no evidence on the point of wages paid to Watchman. It appears that the modus operandi of the Company is to appoint workers without showing their names in the muster roll or record of the company, make payment of their

salary in cash. Not to comply with the provisions of Labour laws and terminate their services; as and when they set up demand for better service conditions. In the event of any dispute, deny master and servant relationship and challenge jurisdiction of the Court to try dispute.

20. The Labour Court after appreciating material on record allowed reference and directed the petitioner to reinstate the workman with full backwages and continuity of service.

21. After examining material available on record and the approach adopted by the Labour Court, it is not possible to notice any perversity in the order. The view taken by the Court below is a reasonable and possible view. This Court not being a Court of appeal is not expected to reappreciate the evidence, though some evidence was examined to find out reasonableness and proper consideration. In this view of the matter, no case is made out to interfere with the impugned order. Petition is, therefore, dismissed. Rule is discharged with no order as to costs.

22. At this juncture, Shri Ganguli for the respondent brought to my notice the order of this Court dated 17.3.1997; wherein petitioner was

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directed to deposit Rs. 1,50,000/- out of which 50% was allowed to be withdrawn without furnishing any security and 50% on furnishing security. He prays that balance 50% may be allowed to be withdrawn without furnishing any security. Prayer made is granted. Registry is directed to pay amount by pay's a/c cheque in favour of the respondents.

23. In the result, petition is dismissed. Rule is discharged with costs quantified in the sum of Rs. 10,000/- (ten thousand)

(V.C.DAGA,J.)